ALTS

ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

November 5, 2001

VIA ELECTRONIC FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Developing a Unified Intercarrier Compensation Scheme; CC Docket No. 01-92

Dear Ms. Salas:

Attached are reply comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Scheme	)	CC Docket No. 01-92
	)	

REPLY COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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REPLY COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby files its reply comments in the above-referenced proceeding in response to the Commission's Notice of Proposed Rulemaking regarding intercarrier compensation.[1] The Commission seeks comment on certain proposals for a mandatory bill and keep regime for intercarrier compensation to replace the current calling party network pays ("CPNP") regime for most types of traffic. For the reasons discussed below, ALTS urges the Commission not to adopt a mandatory bill and keep regime but to more thoroughly implement CPNP with cost-based rates. If the Commission does decide to adopt a mandatory bill and keep regime, it must not do so piecemeal. It should ensure that all forms of intercarrier compensation move to bill and keep simultaneously so that no class of carriers is unfairly disadvantaged in the transition.

I. The Commission Should Further Implement Cost-Based Intercarrier Compensation Rates, Not a Bill and Keep Regime.

ALTS urges the Commission not to adopt a mandatory bill and keep regime for intercarrier compensation because it would not provide compensation to carriers for their costs of providing services to other carriers. As a result of the Commission's recent decisions regarding access charges and reciprocal compensation, intercarrier compensation rates continue to decline. Because regulatory and market forces are driving intercarrier compensation rates to cost, the Commission need not intervene now to adopt an entirely new compensation scheme that would shift those rates to zero. ALTS agrees with Cbeyond that this proceeding should be expanded to address packet-based networks so that the Commission can consider all technologies in developing its policies.[2] ALTS maintains, however, that mandatory bill and keep is plainly not appropriate for traditional circuit switched networks.

Rather than adopting a new intercarrier compensation scheme, the Commission should more thoroughly implement CPNP with cost-based rates.[3] Carriers incur costs in originating and terminating traffic, and they should be compensated for those costs. Reasonable rates will do just that – compensate carriers – and will not cause regulatory arbitrage or require implicit subsidies.[4] It is improper for the Commission to disregard carriers' costs or assume they will disappear under a mandatory bill and keep regime. Voluntary bill and keep arrangements recognize that costs are incurred but assume a balance in traffic combined with potential savings in billing administration will compensate the parties. Thus, while it may be appropriate for carriers to voluntarily agree to a bill and keep arrangement between themselves, the Commission should not

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[1] *In the Matter of Developing a Unified Intercarrier Compensation Scheme,* Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92 (rel. April 27, 2001) ("*NPRM*").

[2] Cbeyond Comments at 2-6.

[3] Focal, PacWest, RCN, US LEC (Focal *et al.*) Comments at 4.

[4] Maryland Office of Public Counsel ("MD OPC") Comments at 21. ALTS also agrees with OPUCT's rationale that if reciprocal compensation rates are based on TELRIC, then ILECs should be indifferent to paying CLECs $2 billion in reciprocal compensation because they would be saving $2 billion in termination costs on their own networks. Office of Public Utility Counsel of Texas ("OPUCT") Comments at 31.

mandate such a regime for all traffic between all carriers, especially when the Commission has highlighted the current imbalance of traffic between certain carriers.

A. Mandatory Bill and Keep Will Not Satisfy The Most Important Goals of This Proceeding.

While the Commission appears to believe bill and keep would eliminate its need for regulatory oversight, it is clear the complexities involved in both bill and keep proposals will necessitate Commission oversight for implementation. The Commission would need to transform the existing complex system of access charges into a program of federal end user charges.[5] Considering the political issues surrounding the primary interexchange carrier charge ("PICC") and universal service end user charges instituted after the Commission's earlier access charge and universal service reform rulings, it is unlikely the Commission will be able merely to adopt a mandatory bill and keep regime and relieve itself of any further regulatory duties.[6]

ALTS understands the Commission's desire to adopt intercarrier compensation rules that will promote economic efficiency and reduce arbitrage opportunities; however, ALTS believes that one of the Commission's primary goals in this proceeding should also be to ensure regulatory certainty. Because of the drawn-out proceedings surrounding access charges and reciprocal compensation over the past several years, many carriers have been uncertain as to whether they will receive money owed from other carriers. This has led to uncertainty within the financial community and created difficulty for carriers seeking additional funding necessary to maintain and expand their business plans. Moreover, the refusal of some carriers to pay amounts owed has led to financial strain, even bankruptcy, for some carriers. Adopting bill and keep would toss all of these issues

[5] Focal *et al.* Comments at 7.

back on the table and create more uncertainty in the market. It is imperative that the Commission ensure a balance is maintained between promoting efficiency and ensuring regulatory certainty for the industry.[7]

B. Mandatory Bill and Keep is Not Competitively Neutral and Imposes Significant Costs on CLECs That Are Not Incurred By ILECs.

In developing its policies, the Commission has strived to ensure they are competitively neutral and do not favor one class of carriers over another. ALTS believes that adoption of bill and keep would highly favor ILECs and be detrimental to competitors. Before adopting a mandatory bill and keep regime, the Commission must be sure that the benefits of rearranging compensation and transport arrangements clearly outweigh the potentially significant costs of network re-optimization.[8]

The mandatory bill and keep proposals discussed in the *NPRM* would require CLECs essentially to duplicate the ILECs' network architecture and restructure interconnection arrangements, requiring uneconomic facility investments by CLECs that would not be required of ILECs.[9] Transitioning to a scheme requiring multiple interconnection points per LATA for a CLEC's originating traffic and maybe more points per LATA for an ILEC's originating traffic would prove very costly for CLECs, while ILECs would not have to incur significant additional costs.[10] Additionally, as KMC notes, mandatory bill and keep would create incentives for ILECs to reconfigure their networks in order to maximize the costs that other carriers incur to terminate ILEC-originated calls while minimizing the costs that the ILECs incur to terminate calls

[6] OPUCT Comments at 51-52; NASUCA Comments at 35.
[7] Focal *et al.* Comments at 3; Allegiance Comments at 6-10.
[8] WorldCom Comments at 8.
[9] Allegiance Comments at 18, 22.
[10] *Id.* at 8-9.

originated by other carriers.[11] With smaller customer bases and less balanced traffic over which to spread termination costs, CLECs would have more difficulty recovering these higher costs.[12]

Furthermore, adopting a policy requiring CLECs to establish multiple interconnection points may delay or discourage deployment into rural areas. Currently CLECs are able to take advantage of new technologies by interconnecting with ILECs at a single point; however, requiring CLECs to establish an interconnection point in every rate center would discourage them from providing service outside of the most densely populated areas.[13] The Commission should reaffirm the importance of policies allowing carriers to maximize interconnection opportunities without needlessly requiring CLEC interconnection at multiple points.[14]

The Commission must also consider the negative impact of a mandatory bill and keep regime on UNE pricing and the overall wholesale relationship between ILECs and CLECs. ALTS is concerned, as is the California PUC, that changing the current consistent pricing methodology for UNEs and transport and termination could give ILECs incentives to argue for higher UNE rates.[15] Such a result would dramatically disadvantage competitors needing access to UNEs on cost-based rates. Conversely, cost-based reciprocal compensation rates would likely create downward pressure on collocation rates. With lower reciprocal compensation rates, ILECs would more likely compete for ISPs by providing them collocation at market rates, thus also forcing down

[11] KMC Comments at 4; *see also* Time Warner Telecom ("TWTC") Comments at 16; Allegiance Comments at 16.
[12] KMC Comments at 4; Focal *et al.* Comments at 12.
[13] Cablevision Lightpath Comments at 4-5.
[14] America Online ("AOL") Comments at 2.
[15] *See* California PUC Comments at 5.

ILECs' excessive collocation rates for CLECs.[16] Furthermore, CLECs continue to be disadvantaged by the fact that they are unable to obtain certain UNEs at cost-based rates and are forced to purchase substitute services, such as special access, which are priced at higher tariffed rates. Imposing a mandatory bill and keep regime and further disadvantaging them vis a vis the ILECs would be unfair and detrimental to competition.

C. A Mandatory Bill and Keep Regime Would Negatively Impact Consumers and Increase Universal Service Contributions.

Many commenters addressed the negative impacts of mandatory bill and keep on end users. The most obvious impact highlighted is the increase in local rates necessary for carriers to recover costs from their local end users. Several large ILECs claim retail rates will require significant restructuring and argue that pricing flexibility should be permitted for end user cost recovery.[17] Rural and independent ILECs also predict a tremendous increase in rural retail rates under a mandatory bill and keep regime.[18] While long distance rates may decline – if IXCs pass through access charge reductions, which is not guaranteed – an increase in flat local rates would "wrest control over telecommunications costs away from subscribers, because they would no longer be able to reduce costs by choosing to place fewer [long distance] calls."[19]

Additionally, ALTS is concerned that adoption of mandatory bill and keep may lead to an increase in universal service fund contributions, as suggested by several commenters. For example, USTA urges the Commission to modify the universal service system to address the "severe" impact of bill and keep on the rates of rate-of-return

[16] OPUCT Comments at 42.
[17] Qwest Comments at 33; SBC Comments at 9-10, 31-32; BellSouth Comments at 15.
[18] NECA Comments at 5.
[19] CompTel Comments at 12-13.

ILECs.[20] Several state commissions also argue that the increase in end-user rates under the proposals may create pressure to increase state and federal universal service funds.[21] The Commission must consider the dramatic impact of these increases on consumers and weight that against the perceived benefits of the bill and keep proposals.

ALTS also believes that the economic analysis underlying the mandatory bill and keep proposals is erroneous. Evaluating who benefits from a call is an unverifiable and unsustainable basis on which to base major reforms of intercarrier compensation.[22] Moreover, as many commenters explain, the assumption in the OPP papers that each party benefits equally is unproven and likely false.[23] For example, Sprint argues that both the calling and called parties cause the costs of the call, but the cost of the call bears no relationship to the call's content, thus making a benefit analysis inappropriate.[24] Because it is impossible to say how the benefits of a call are shared, it is bad public policy to assume both parties benefit equally and base policy changes on this assumption.[25] More importantly, mandatory bill and keep would create negative externalities and encourage more unwanted calls and subsidizing telemarketers.[26] NTCA notes that by shifting costs to the called party and its carrier, bill and keep would provide incentives to the calling party to place calls that otherwise would not have been cost effective under CPNP,

[20] USTA Comments at 23-24.
[21] Florida PSC Comments at 3-4; Wisconsin PSC Comments at 5.
[22] Focal *et al.* Comments at 43.
[23] Allegiance Comments at 21; Ad Hoc Telecommunications Users Committee ("Adhoc") Comments at 5; NASUCA Comments at 21; CompTel Comments at 14-16; OPUCT Comments at 55-57.
[24] Sprint Comments at 14-15.
[25] NASUCA Comments at 21; CompTel Comments at 14-16; OPUCT Comments at 55-57; Ad Hoc Comments at 5.
[26] AT&T Comments at 25; MD OPC Comments at 27-28; OPUCT Comments at 18-19.

resulting in an *inefficient* use of network resources.[27] This is clearly not a result preferred by the Commission.

D. Bill and Keep Will Not Eliminate Opportunities for Regulatory Arbitrage

The Commission began this proceeding with the flawed assumption that traffic imbalances between carriers are evidence of inefficiencies in the market.[28] ALTS submits that these imbalances are not inherently bad, but are merely a result of competition in the marketplace for customers with varying calling patterns. Specialization and niche marketing are the basis for competition.[29] As many commenters noted, arbitrage opportunities are the rational economic result when the regulatory system imposes different economic burdens for the same basic function.[30]

Traffic imbalances do not automatically equate with market failure as shown by the large imbalances between ILECs and CMRS providers, in the ILECs favor, which neither the FCC nor ILECs have ever considered a serious problem.[31] ALTS also finds it telling that ILECs have not complained about traffic imbalances when they weigh in their favor and urges the Commission to seriously reconsider its conclusion that such imbalances are inherently detrimental to the marketplace. In fact, regulatory arbitrage may be a means of driving retail prices closer to costs, as evidenced by declining reciprocal compensation rates.[32] Before the debate over compensation for ISP-bound traffic, the ILECs had no incentive to reduce reciprocal compensation rates for local traffic because they were the net recipients of those funds. However, once the ILECs began paying those higher rates to CLECs, they began agreeing to accept lower

[27] NTCA Comments at 16-18.
[28] Ad Hoc Comments at 6; OPUCT Comments at 30.
[29] Allegiance Comments at 12-13.
[30] Level 3 Comments at 21-22; CompTel Comments at 7; Allegiance Comments at 11.
[31] OPUCT Comments at 30.

reciprocal compensation rates overall. The Commission should be encouraged by these market forces, not intervene now to regulate the rates to zero.

Furthermore, most of the industry players are skeptical that mandatory bill and keep would eliminate opportunities for regulatory arbitrage because it would create new regulatory distinctions.[33] In fact, Verizon suggests that bill-and-keep could result in even greater opportunities for uneconomic activity.[34] The Commission's concerns with regulatory arbitrage – for ISP-bound traffic and IP telephony – have nothing to do with CPNP and everything to do with rates that stray significantly from economic costs.[35] ALTS strongly agrees that mandatory bill and keep would essentially price traffic below cost, which is every bit as market distorting as pricing above costs.[36] With compensation rates set at zero, carriers will have incentives to push costs onto other carriers by, for example, providing services to customers that originate higher volumes of traffic because the carrier will not be assessed for terminating costs incurred by other carriers. This is merely a shift of the arbitrage opportunities available in a regime with rates above cost.

II. If The FCC Decides To Adopt A Bill And Keep Regime, It Should Not Do So Piecemeal And Should Minimize Disadvantages to Any Class of Carriers.

If the Commission decides to adopt a new intercarrier compensation scheme, it must allow a significant transition period for carriers to adjust their business plans and strategies.[37] Furthermore, before adopting any mandatory bill and keep regime, the Commission should propose a practical implementation plan and allow further public comment. As many commenters stressed, the two OPP proposals presented are abstract

[32] TWTC Comments at 9; Allegiance Comments at 11-12.
[33] KMC Comments at 4.
[34] Verizon Comments at 2.
[35] AT&T Comments at 13-17.
[36] Ad Hoc Comments at 2-3.
[37] Cablevision Lightpath Comments at 12-13.

and present practical problems with implementation.[38] Transition to a new regime would require extensive implementation proceedings to address complex issues such as preventing new ILEC opportunities to raise CLECs' costs or to deny, delay, or degrade interconnection; allocating rights to dictate network architecture for originating access traffic; and defining central offices.[39]

Most importantly, ALTS opposes any phased-in transitional approach whereby compensation for ISP-bound traffic is moved to bill and keep prior to compensation for all other local traffic or access charges. As noted by Focal *et al.*, singling out ISP-bound traffic for early implementation sends the wrong signals to investors – that the Commission will protect ILECs from competition.[40] As argued in the reciprocal compensation proceeding, allowing different rates for Section 251(b)(5) traffic and ISP-bound traffic will allow ILECs to have the best of both worlds, receiving high reciprocal compensation from CLECs for 251(b)(5) traffic while paying nothing to CLECs to terminate ISP-bound traffic.[41] Furthermore, the Commission's new rules regarding compensation for ISP-bound traffic eliminate opportunities for regulatory arbitrage, thus there is no reason for the Commission for further intervene to protect the ILECs.[42] ALTS agrees with AT&T's characterization: the proposal to phase-in bill-and-keep, implementing it first for areas in which reform is least needed, is "reverse triage" that would tip the competitive scales even further in favor of ILECs and create new opportunities for arbitrage.[43]

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[38] NECA Comments at 14.
[39] TWTC Comments at 13.
[40] Focal *et al.* Comments at 12-16.
[41] *Id.* at 22.
[42] TWTC Comments at 20.

CONCLUSION

For the foregoing reasons, the Commission should not adopt a mandatory bill and keep regime for intercarrier compensation. If the Commission does opt to implement mandatory bill and keep, it should ensure that all intercarrier compensation mechanisms are transitioned simultaneously so that no class of carriers is unfairly disadvantaged in the interim.

Respectfully Submitted,

____/s/ Teresa K. Gaugler____________

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[43] AT&T Comments at. 2, 6.